

EXHIBIT A

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BARBARA HILL,	.	Docket No.
	.	1:24-CV-03506-RPK-LB
Plaintiff,	.	
	.	
v.	.	Brooklyn, New York
	.	Thursday, March 20, 2025
THE DEPARTMENT OF	.	
EDUCATION OF THE CITY OF	.	
NEW YORK,	.	
	.	
Defendant.	.	
.	

TRANSCRIPT OF TELEPHONIC CONFERENCE
BEFORE THE HONORABLE RACHEL P. KOVNER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	BARBARA HILL, PRO SE 1423 East 104th Street Brooklyn, New York 11236
For the Defendant:	New York City Law Department KATHLEEN LINNANE, ESQ. SHIVANI REDDY DAMERA, ESQ. 100 Church Street Suite 2-196 New York, New York 10007 212-356-2467
Transcription Service:	Superior Reporting Services LLC P.O. Box 5032 Maryville, TN 37802 865-344-3150

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1 P R O C E E D I N G S

2 THE COURT: Good morning. This case is Hill versus
3 Department of Education of New York City, 24-civil-3506. Do
4 we have the plaintiff on the line?

5 MS. HILL: Yes, I'm on the line.

6 THE COURT: Okay. Great. And do we have counsel
7 for the defendant on the line?

8 MS. LINNANE: Yes.

9 MS. DAMERA: Yes.

10 THE COURT: Okay. And who is representing the
11 defendant today?

12 MS. LINNANE: Kathleen Linnane for the
13 City -- corporation counsel for the City.

14 THE COURT: Great. Okay.

15 MS. DAMERA: And Shivani -- I'm sorry, I'm also
16 here. And Shivani Damera representing defense in this
17 matter.

18 THE COURT: Great. Okay. So as you all know,
19 Plaintiff has filed a complaint in this case raising a number
20 of claims. Defendant has filed a motion to dismiss those
21 claims. We're here for a ruling on that motion. And for the
22 reasons that I'll explain, Defendant's motion to dismiss is
23 granted in part and denied in part.

24 In particular, Defendant's motion is denied with
25 respect to Plaintiff's failure-to-accommodate claim under

1 Title VII. It's granted as to Plaintiff's remaining claims.

2 So to explain this ruling, let me just back up and
3 give a little bit of background. I know you all are familiar
4 with the allegations and the complaints, and for purposes of
5 a motion to dismiss, the factual allegations in the complaint
6 are assumed to be true.

7 Plaintiff was employed by the defendant, the
8 Department of Education of the City of New York, as a
9 physical therapist. In September of 2021, Plaintiff learned
10 that under an arbitration between the union, the United
11 Federation of Teachers, and Defendant, any employee of
12 Defendant who did not submit to a -- submit a COVID
13 vaccination card to the Department of Education by October
14 4th, 2021, would be placed on unpaid leave unless an
15 accommodation was granted.

16 On September 20th of 2021, Plaintiff applied for a
17 religious accommodation stating that she would not be able to
18 get vaccinated due to her religious beliefs, which she
19 alleges are sincere and deeply held. Two days later,
20 Plaintiff received a denial letter stating that, quote, "No
21 remote site as an accommodation could be offered" because
22 this would be an undue hardship for Defendant. Plaintiff
23 claims that no details about how or why the remote site would
24 cause an undue hardship were given and that many other
25 employees were granted their requested exemptions with

1 medical and religious and reassigned to remote locations.

2 Plaintiff appealed the denial of her accommodation
3 request to an arbitrator, but no accommodation was granted.

4 In October of 2021, Plaintiff was placed on unpaid
5 leave. Plaintiff alleges that Defendant also placed what's
6 described as a problem code on her personnel file and that
7 this prevented her from working for any vendor connected with
8 Defendant.

9 In November of 2021, a citywide panel was created
10 to reconsider religious accommodation requests. Plaintiff
11 again appealed the denial of her accommodation request, but
12 her appeal was denied in February 2022.

13 Plaintiff alleges that Defendant made no attempt to
14 give her a remote location or telehealth possibilities even
15 though physical therapists have been officially recognized as
16 capable of effective treatment by working remotely and
17 virtually. And allegedly, all of the agencies Plaintiff
18 works for except for Defendant gave her an accommodation in
19 the form of her remote work.

20 Plaintiff also alleges in her opposition brief that
21 in denying her accommodation request, Defendant failed to
22 acknowledge their well-known accommodations, which include
23 reassigning unvaccinated employees to rooms set aside for
24 such employees or to their homes for remote work. This is in
25 the opposition at 15.

1 The notification denying Plaintiff's accommodation
2 request, which is attached to Plaintiff's opposition brief,
3 states that Plaintiff, quote, "failed to establish a
4 sincerely held religious belief that precludes vaccination."
5 Unquote. Then it states that Defendant, quote, "has
6 demonstrated that it would be an undue hardship to grant
7 accommodations to," close quote, Plaintiff given the need for
8 a safe environment for in-person learning. Defendant
9 terminated Plaintiff's employment in February or March of
10 2022.

11 Plaintiff states in her complaint that she filed a
12 notice of claim. That notice of claim, which is submitted by
13 Defendant, is dated May 9th of 2023. Plaintiff was rehired
14 by Defendant in February 2024 at a lower salary because she
15 was designated a new hire.

16 Plaintiff filed this lawsuit in May of 2024.
17 Liberally construed, her complaint raises the following
18 claims: First, disparate treatment based on religion in
19 violation of Title IX of the Civil Rights Act of 1964 -- I'm
20 sorry, Title VII of the Civil Rights Act of 1964, the New
21 York State Human Rights Law, and the New York City Human
22 Rights Law.

23 Second, failure to accommodate religion in
24 violation of the same laws.

25 Third, retaliation in violation of those laws as

1 well as the Rehabilitation Act and 42 U.S.C. 1983.

2 Fourth, a violation of Plaintiff's First Amendment
3 right to free exercise of religion under section 1983.

4 Fifth, a violation of Plaintiff's Fourteenth
5 Amendment right to procedural due process under section 1983,
6 including though a stigma-plus violation.

7 And sixth, fraud based on the arbitration award
8 between Defendant and the union, UFT.

9 Plaintiff seeks damages on her claims.

10 Defendant has moved to dismiss under Federal Rule
11 of Civil Procedure 12(b)(6). Defendant argues that
12 Plaintiff's failure to file a timely notice of claim bars
13 certain claims and that her remaining claims are not
14 adequately pleaded.

15 So since we're proceeding under Rule 12(b)(6), let
16 me just briefly explain the requirements of that rule. That
17 rule directs a Court to dismiss a complaint if it fails to
18 stay a claim on which relief can be granted. To survive a
19 motion to dismiss a claim under this rule, the complaint has
20 to state a claim to relief that's plausible on its face. The
21 Court accepts all the facts alleged in the complaint as true
22 but is not obliged to accept mere conclusory statements.

23 At the motion to dismiss stage, the Court can
24 consider only the complaint itself, documents either attached
25 to the complaint or incorporated in it by reference, and

1 documents the Plaintiff relied on and knew of when bringing
2 suit, as well as matters in the public record that are
3 subject to judicial notice.

4 When a plaintiff is pro se, a Court can also
5 consider factual allegations made in the pro se Plaintiff's
6 opposition to a motion to dismiss. And as you all know, the
7 pleadings for a pro se Plaintiff are liberally construed and
8 held to a less stringent standard than the formal pleadings
9 drafted by lawyers.

10 Okay. So as I mentioned applying these standards,
11 Defendant's motion to dismiss is denied as to the failure to
12 accommodate the claim under Title VII but granted as to
13 Plaintiff's remaining claims. I'll just walk through each of
14 those claims one by one.

15 So first, Plaintiff's claims under the New York
16 State Human Rights Law, New York City Human Rights Law, and
17 Plaintiff's fraud claim are all barred for lack of timely
18 notice of claim. To bring those claims, Plaintiff had to
19 serve Defendant with a notice of claim within three months of
20 the accrual of her New York State Human Rights Law and New
21 York City Human Rights Law and within 90 days of the accrual
22 of her fraud claim. And the statutory provisions at issue
23 there are New York Education Law 3813(1) and 3813(2).

24 Here, because Plaintiff was terminated in March
25 2022 at the latest, her notice of claim was due before July

2022. Plaintiff's notice of claim was filed in May 2023, and it was therefore untimely. Because there was no dispute that Plaintiff did not file a timely notice of claim, her New York State Human Rights Law, New York City Human Rights Law, and fraud claims against the defendant fails the matter of law. So those claims are therefore dismissed.

Plaintiff has adequately alleged a failure-to-accommodate claim under Title VII. Under Title VII when an employee has a genuine religious practice that conflicts with a requirement of employment, the employer typically must offer the employee a reasonable accommodation unless doing so would cause the employer to suffer an undue hardship.

To survive a motion to dismiss with respect to a Title VII claim of this type, a Plaintiff has to plausibly allege that the plaintiff held the bona fide religious belief conflicting with an employment requirement, that the plaintiff informed her employer of this belief, and that she was disciplined for failing to comply with this conflicting employment requirement. If the plaintiff does make those plausible allegations, then the burden shifts to the defendant to demonstrate an undue hardship. Because undue hardship is an affirmative defense, it may be raised on a pre-answer motion to dismiss only if the facts establishing it are clear from the face of the complaint. The undue

1 hardship inquiry is fact specific, and it requires showing a
2 burden that's substantial in the overall context of an
3 employer's business.

4 Here, Defendant does not, for the purposes of its
5 motion to dismiss, dispute that Plaintiff has plausibly
6 alleged the three prerequisites for failure-to-accommodate
7 claim. This is in Defendant's memorandum in support of its
8 motion at 13 to 14.

9 As a result to be entitled to dismissal, Defendant
10 would have to establish an undue hardship defense on the face
11 of Plaintiff's pleadings. Defendant has not done so.
12 Defendant asserts various facts in support of its claim for
13 undue hardship. But only one of those appears on the face of
14 Plaintiff's submission, which is a claim made in a denial
15 letter that it would be an undue hardship to grant
16 accommodation to Plaintiff given the need for a safe
17 environment for in-person learning. This is in the
18 opposition at 74. But liberally construed, the complaint
19 alleges that the finding of undue hardship was erroneous or
20 pretextual.

21 The complaint's factual allegations plausibly
22 suggest that Plaintiff requested a remote work accommodation,
23 and that such accommodation would not have imposed an undue
24 hardship on Defendant. Specifically, the complaint alleges
25 the Defendant granted such accommodations for other employees

1 and that Plaintiff's work as a physical therapist could be
2 adequately conducted remotely.

3 Given those allegations and the fact specific
4 nature of the undue hardship inquiry, Defendant's asserted
5 need for a safe in-person learning environment is
6 insufficient at this stage to establish undue hardship as a
7 matter of law.

8 Defendant is mistaken in arguing that because the
9 vaccine mandate was a lawful employment condition, Plaintiff
10 was not disciplined for her noncompliance. The cases that
11 Defendant cites for the proposition that placement on unpaid
12 leave and termination for failure to comply with the vaccine
13 mandate do not constitute discipline made that conclusion
14 only in determining whether the Constitution required
15 additional process for those determinations. Those cases do
16 not support the Defendant's distinct claim here or otherwise
17 explain how the lawfulness of an employment condition
18 precludes it from qualifying as a conflicting employment
19 requirement for the purposes of failure-to-accommodate claim
20 for which the failure to accommodate a sincerely held
21 religious belief can sustain a Title VII claim. So for that
22 reason, Defendant's motion is denied as to Plaintiff's
23 failure-to-accommodate claim under Title VII. And that claim
24 may proceed.

25 Plaintiff's remaining claims are not adequately

1 pleaded and are therefore dismissed without prejudice. I'll
2 just take them one by one.

3 Plaintiff fails to adequately allege disparate
4 treatment until Title VII. To defeat a motion to dismiss in
5 a disparate treatment context, the Plaintiff has to plausibly
6 allege that the employer took adverse action against her,
7 that her race, color, religion, sex, or national origin was a
8 motivating factor for the employment -- and that her -- I'm
9 sorry, and that her race, color, religion, sex, or national
10 origin was a motivating factor in the employment decision.
11 The Plaintiff must allege facts that show directly
12 discrimination or facts that indirectly show discrimination
13 by giving rise to a plausible inference of discrimination.

14 Plaintiff fails to adequately allege a disparity
15 between those in her protected religion -- her protected
16 class, which is a religion based one, and any similar
17 situated comparative group that would support plausible
18 inference of discrimination. Plaintiff's general allegation
19 that similarly situated employees were granted accommodations
20 is insufficient because it's too generic.

21 And to the contrary, Plaintiff's complaint states
22 that Defendant granted both medical and religious requests by
23 other employees for remote work accommodations. And she
24 doesn't allege that she was affected differently by the
25 mandate than members of other religious groups. So

1 accordingly, Plaintiff's disparate-treatment claim is
2 dismissed based on the allegations in this complaint. And
3 for a similar case, we can look at Rizzo versus New York City
4 Department of Sanitation, 23-cv-7190, 2024, Westlaw 3274455
5 at page star 3, an SDNY case from July 2nd of 2024.

6 Plaintiff has also not adequately alleged
7 retaliation in her complaint. To state retaliation, a
8 retaliation claim under Title VII or the Rehabilitation Act,
9 a Plaintiff has to plausibly allege, first, participation in
10 a participant protected activity, second, that the defendant
11 knew of the protected activity, third, an adverse employment
12 action, and fourth, a causal connection between the protected
13 activity and an adverse employment action. To state a First
14 Amendment retaliation claim, a Plaintiff must plausibly
15 allege that her speech or conduct was protected by the First
16 Amendment and that the defendant took an adverse action
17 against her and that there was a causal connection between
18 the adverse action and the plaintiff's protected speech.

19 Here, Plaintiff has not alleged a plausible causal
20 connection between her alleged protected activity or
21 protected speech and Defendant's adverse actions against
22 Plaintiff. While Plaintiff claims that she engaged in
23 protected activity and speech through her refusal to get
24 vaccinated and her request for a religious accommodation,
25 there's nothing in the complaint that plausibly suggests that

1 the conduct by Defendant that she complains of were based on
2 that speech or plausibly connected to that speech. Those
3 acts were pursuant to a general vaccine mandate that
4 Defendant announced before Plaintiff engaged in the protected
5 conduct.

6 Pursuant similar cases reaching a similar
7 conclusion on this set of facts, look at Adams versus New
8 York State Unified Court System, 22-CV-9739, 2023, Westlaw
9 5003593 at page star 4, SDNY, August 4th, 2023, which
10 collects a number of cases reaching the same conclusion on
11 similar facts. So for that reason, Plaintiff's retaliation
12 claims are dismissed.

13 Plaintiff has also failed to allege that Defendant
14 violated her First Amendment right to the free exercise of
15 religion. The free-exercise clause protects an individual's
16 private right to a religious belief as well as the
17 performance of or extension for physical acts that constitute
18 the free exercise of religion. This protection, however,
19 does not relieve an individual of the obligation to comply
20 with a valid and neutral law of general applicability as well
21 as they're subject only to rational basis review.

22 Applying that framework, the Second Circuit has at
23 least twice rejected First Amendment challenges to COVID
24 vaccine mandates, including the mandated issue here because
25 those mandates applied to all of an agencies employees and

1 provided for medical and religious accommodations. And here,
2 I'm quoting the Rizzo case that I cited earlier which is at
3 2024, Westlaw 3274455 at page star 5. And that case is
4 quoting a Second Circuit authority, which is Kane versus De
5 Blasio, 19 F.4th 152, 176 to 177, Second Circuit, 2021. Kane
6 controls Plaintiff's claim here. She fails to plausibly
7 allege that the accommodation process was not neutral or
8 generally applicable or lacked directional basis.
9 Accordingly, the free-exercise claim is dismissed.

10 Turning to the last claim, Plaintiff has not
11 adequately alleged the defendant violated her Fourteenth
12 Amendment right to procedural due process. To state such a
13 claim, the plaintiff has to establish that she possessed a
14 protected property interest and faced a deprivation of that
15 interest without constitutionally adequate process. In the
16 Second Circuit, courts analyze pre- and post-deprivation
17 procedures separately. Here, Plaintiff alleges
18 pre-deprivations: Her placement on unpaid leave, the stigma
19 of Defendant placing a problem code on her personnel file,
20 and her eventual termination. To the extent that Plaintiff
21 challenges the pre-deprivation processes afforded to her, the
22 Constitution generally mandates that only -- mandates only
23 that such process include notice and the opportunity to
24 respond.

25 Plaintiff fails to plausibly allege that she lacked

1 adequate notice of the vaccine mandate or the process of
2 seeking relief from it. To the contrary, the complaint
3 acknowledges that she received notice of the mandate,
4 requested an accommodation, and twice appealed the denial of
5 her accommodation request.

6 District Courts in the Circuit have repeatedly
7 found that the same procedures are constitutionally adequate.
8 And for a couple examples, you could look at Peralta versus
9 New York City Department of Education, which is 21-CV-6833,
10 2023, Westlaw 6201507 at star 3, EDNY, September 22nd, 2023,
11 or Broecker, B-R-O-E-C-K-E-R, versus New York City Department
12 of Education, 573 F. Supp. 3rd 878, 887 to 888, EDNY, 2021.

13 As for Plaintiff's post-deprivation process, the
14 Second Circuit has on numerous occasions held the proceedings
15 in New York State Court under article 78 of New York Civil
16 Practice Law generally provide a perfectly adequate
17 post-deprivation remedy. Here I'm quoting Peralta on the
18 case I just mentioned, 2023, Westlaw 6201507 at page star 4,
19 which is citing a Second Circuit case. Plaintiff doesn't
20 offer any persuasive reason why her case warrants a different
21 conclusion.

22 Finally, to the extent that Plaintiff asserts a
23 stigma-plus claim stemming from the problem code that was
24 placed on her personnel file, that claim fails for
25 essentially the same reasons discussed just now. In essence,

1 Plaintiff is alleging that in addition to placing her on
2 unpaid leave as a result of her status as an unvaccinated
3 person, the Department subjected her to a stigmatizing label.
4 A stigma-plus claim is not different in kind than other
5 procedural due process claims. Here I'm quoting Alterescu,
6 A-L-T-E-R-E-S-C-U, versus New York City Department of
7 Education, 21-CV-925, 2022, Westlaw 3646050 at page star 9,
8 an SDNY case from August 23rd, 2022.

9 As with other procedural due process claims, the
10 plaintiff has to demonstrate that the action she challenges
11 was without due process of the law. Here, I'm citing Segal,
12 S-E-G-A-L, versus City of New York, 459, F.3d 207, 213, at
13 Second Circuit, 2006. Here, as I've explained, Defendant
14 provided adequate pre-deprivation and post-deprivation
15 remedies with respect to the suspension of Plaintiff for the
16 placement on unpaid leave for the failure to become
17 vaccinated against COVID-19.

18 Because Defendants did provide process, Plaintiff's
19 procedural due process challenge failed whether it's framed
20 as a challenge to the placement on unpaid leave or as a
21 challenge to the problem code that allegedly was placed on
22 her personnel file in conjunction with that decision. And
23 for a case reaching a similar decision, you could look at the
24 Alterescu case I cited a moment ago, 2022, Westlaw 3646050 at
25 star 10, which collects a number of similar cases.

1 Okay. So for the reasons I've just explained,
2 Defendant's motion to dismiss is granted in part and denied
3 in part.

4 The New York State Human Rights Law, New York City
5 Human Rights Law, and fraud claims are dismissed with
6 prejudice because the notice of claim or the absence of a
7 timely notice of claim is failed to those claims. And
8 there's no ability to replead additional facts that would
9 surmount that difficulty.

10 Plaintiff's disparate-treatment, retaliation,
11 free-exercise, and procedural due process claims are
12 dismissed without prejudice.

13 Defendant's motion to dismiss is denied as to
14 Plaintiff's failure-to-accommodate claim under Title VII.

15 If Plaintiff wants to amend her complaint in
16 response to this decision to allege additional facts
17 pertaining to the claims that have been dismissed without
18 prejudice, she can do so. She should file a motion to
19 dismiss within 30 days of the issuance of today's decision
20 which she seeks to amend and includes a proposed amended
21 complaint as an exhibit. She should include a letter or a
22 motion along with that proposed amended complaint that
23 explains why the amended complaint solves the pleading
24 deficiencies I discussed today. Any amended complaint will
25 replace Plaintiff's original complaint.

1 I'll stay all further proceedings in this case for
2 30 days to give the Plaintiff an opportunity to decide
3 whether she wants to file a motion to amend. If Plaintiff
4 does not file on the motion to amend within 30 days, then the
5 case will continue to move forward on Plaintiff's
6 failure-to-accommodate claim, which as I've explained is not
7 being dismissed.

8 I'll enter a docket entry today that reflects the
9 disposition of these claims. I'm not going to issue a
10 written opinion in this case because I've explained the
11 disposition of these claims in this oral ruling.

12 Is there anything anybody wants to take up today
13 before we end the conference?

14 MS. LINNANE: No thank you, Your Honor.

15 THE COURT: Okay.

16 MS. HILL: Will the recording be available to me?

17 THE COURT: Yes. To be honest, I'm not expert on
18 this issue. There is a recording that's made of the
19 conference, and there is an ability to generate a transcript
20 of that conference.

21 Can I ask Counsel for Defendant: Are you familiar
22 with that process with how a litigant would go about
23 obtaining that?

24 MS. LINNANE: I'm not, Your Honor. But my office
25 is for sure. And the City will -- is glad to order the

1 transcripts. I don't know how long that takes, though. I'm
2 glad to order the transcript and provide it upon receipt.
3 But I just don't know if that, you know, if that takes a long
4 time, if that would be prejudicial in any way.

5 THE COURT: Sure. Well, that would be helpful. I
6 appreciate the City's doing that. The City's ordering the
7 transcript.

8 In the event that it's going to take longer than
9 you're comfortable with, Plaintiff, in terms of that you're
10 going to need more time to decide whether to file an amended
11 complaint, just put in a letter and let me know. My guess
12 would be that you'll get the transcript in reasonably short
13 order. But if it turns out you need more time to make that
14 decision on it, just put in a letter, and I'd be happy to
15 give you more time.

16 MS. HILL: All right. Thank you.

17 THE COURT: Okay. All right. Thank you all for
18 joining the conference today.

19 MS. LINNANE: Thank you.

20 MS. DAMERA: Thank you, Your Honor.

21 (Proceedings adjourned.)
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TRANSCRIBER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

March 27, 2025

Jackey Boelkow

DATE

Legal Transcriber